IN THE

Supreme Court of the United States

OCTOBER TERM

1937

No. 374

TICONIC NATIONAL BANK,
PEOPLES-TICONIC NATIONAL BANK, and
ARTHUR G. PICHER,
AS RECEIVER OF BOTH SAID BANKS,
Petitioners,

v.

LOTTIE F. SPRAGUE and MARGARET DAVIS SPRAGUE,
Respondents.

Petition for Writ of Certiorari to The United States Circuit Court of Appeals for the first Circuit

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Additional Brief For Respondents

The single question left in this case is as to the allowance of interest. It is found and decided that a lawful trust was established. That securities were segregated in accordance with the statute. That the funds were held in trust for in-

vestment but never invested. That the funds were used by the bank in its own business. That the segregated securities were sold to the Peoples National Bank which had full knowledge of their character and of the trust secured. That the Peoples Bank segregated them again as security for other trusts. That they subsequently came into the hands of the Receiver of the Peoples National Bank who later became Receiver of the Ticonic National Bank. That they were found in his hands before bringing this suit and that he subsequently "sold the bonds for $20,722.66 which sum he now holds apart from the general assets of the banks." (See opinion of the Circuit Court of Appeals).

The question seems to be as to the position and status of these segregated bonds. Shall they be held and charged as personal sureties would be held and charged if the trustee had given a bond with sureties? We believe it was the intention of Congress in passing this Section 248 (k) to impose upon banks acting under it the ordinary duties and obligations of fiduciaries according to long settled and well established rules and principles. By the clause providing for segregation of securities we believe it meant, in the contingency provided for and which has arisen in this case, that the segregated securities should be holden in the same manner and to the same extent that personal sureties would be held on an ordinary bond. No other interpretation is reasonable or hardly possible. This seems to have been taken for granted in the Michigan case 244 U. S. 416 especially at page 426 where the court said:

> "Of course as the general subject of regulating the character of business just referred to is peculiarly within state administrative control, state regulations for the conduct of such business, if not discriminatory or so unreasonable as to justify the conclusion that they necessarily would so operate, would be controlling upon banks chartered by Congress when they came in virtue of authority conferred upon them by Congress to exert such particular powers. And these considerations clearly were in the legislative mind when it enacted the statute in question."

The segregation of these securities was itself the creation of a trust in which the bank was trustee, the securities were the res and the beneficiaries were whoever might at any time thereafter be equitably entitled to trust funds held by the bank awaiting investment at the time of insolvency.

B. & A. R. R. Co. v. Mercantile Trust & Deposit Co. 82 Md. 535.

Now then would personal sureties be liable for interest under such circumstances? We believe they are always holden for interest or income in all such cases. We search the books in vain for any exception to this rule.

Vide Bassett v. Fidelity & Deposit Co. 184 Mass. 210 and Blake v. Traders National Bank 145 Mass. 13 in which cases the liability of sureties and the allowance of interest are discussed with many citations.

Vide also Choate v. Arrington 116 Mass. 552 at page 556 where the court says:

> "The surety is liable for whatever is properly chargeable to his principal in the official capacity on account of which the bond was given; and whatever is competent as evidence upon which to charge the principal is competent also against the surety."

Furthermore, it is a general principle in all cases of insolvency that holders of security are entitled to compute interest to the time of settlement if their security is sufficient for that purpose.

Matter of Murray 6 Paige 204;
In re Edward Hogan 10 B. R. 383;
In re R. M. and S. P. Towne 8 B. R. 40.

These plaintiffs are not ordinary creditors. The discussion based on that assumption is wide of the mark.

Respectfully submitted,

HARVEY D. EATON.